

**United States Department of Labor
Employees' Compensation Appeals Board**

J.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Humacao, PR, Employer**

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**Docket No. 16-1424
Issued: March 7, 2017**

Appearances:

Paul Kalker, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge

COLLEEN DUFFY KIKO, Judge

ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On June 27, 2016 appellant, through counsel, filed a timely appeal from a May 26, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish an emotional condition in the performance of duty.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 25, 2014 appellant, then a 45-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained stress-related conditions in the form of arterial hypertension and adjustment disorder with anxiety and depression. He indicated that he first became aware of his claimed condition on November 8, 2013 and first realized on September 10, 2014 that it was caused or aggravated by his employment. Appellant stopped work on September 10, 2014.

In a letter dated October 29, 2014, OWCP requested that appellant submit additional factual and medical evidence in support of his emotional condition claim.

Appellant submitted an undated statement, received by OWCP on November 28, 2014, in which he discussed various incidents and conditions at work which he felt caused his stress-related emotional conditions. He asserted that the postmaster for his workplace improperly gave him a predetermination interview (PDI) letter and letter of warning for performance on September 19, 2009 regarding his rest breaks that day. Appellant felt that this constituted harassment and he filed an Equal Employment Opportunity (EEO) complaint. He asserted that the outcome of the EEO mediation was that his delivery route would be modified with more centralized deliveries. Appellant alleged that the postmaster created a hostile work environment and that, on October 7, 2010, he had an argument about his work with the postmaster which appellant claimed was unprofessional. He asserted that the postmaster had incorrectly given him a letter of warning for improper conduct. Appellant claimed that he filed a grievance and it was determined that the letter of warning would be rescinded due to it being punitive and not corrective.

In his undated statement, appellant alleged that another postmaster at work (hereinafter referred to as second postmaster) harassed him by questioning his work based on a measuring tool called Delivery Operation Information System, which is a management tool for estimating a carrier's daily workload. He asserted that projections based on the system were improperly used as the sole basis for determining the leaving and/or returning time on a daily basis. Appellant claimed that in February 2013 the second postmaster ordered him not to separate the mail anymore for a particular address. He felt that this created a "hostile environment" since customers started to harass him by questioning why their mail was being delivered to private mailboxes instead of their own businesses. Appellant asserted that on November 17, 2010 he was given another improper PDI letter due to a November 13, 2010 incident when another coworker "cuss me out on the work floor." He noted that on October 15, 2011 he filed grievances for disparate treatment since management otherwise allowed violence on the work floor. Appellant asserted that on October 30, 2013 the second postmaster accused appellant of assaulting a coworker and threatened to send him home if he did not comply. The second postmaster gave him a PDI letter without considering appellant's statement and refused to let him have union representation.

In his undated statement, appellant asserted that in January 2014, the postmaster allowed other carriers to disturb the peace by making noise and jokes in which she participated. He claimed that, on the other hand, his supervisor would tell him to keep to himself and avoid any contact with coworkers. Appellant indicated that the postmaster made him work in a manner that

did not take into consideration his health condition. He claimed that she gave him the largest part of a particular job and gave a coworker the smallest part. Appellant asserted that on one occasion the postmaster wrongly accused him of delaying the mail. He indicated that he requested a special inspection of his mail route to stop being harassed by the postmaster complaining that his delivery route was “under time.” Appellant asserted that the postmaster violated his rights by changing his route before the inspection occurred. He asserted that the postmaster shouted and yelled at him including on September 10, 2014. Appellant claimed that the postmaster embarrassed him in front of his coworkers, including an occasion on October 22, 2014 when the postmaster publicly posted an incorrect statement that he was the only one who missed scans for his route. Appellant asserted that the postmaster puts appellant’s “integrity in jeopardy.” Appellant claimed that on October 29, 2014 the postmaster improperly told a customer that her packages were not delivered because of him.

Appellant submitted numerous documents in support of his claim, including disciplinary letters he received, documents from EEO complaints, and witness statements of coworkers and customers. In a May 29, 2014 statement, a customer complained about his mail being delivered to private mail boxes. In a November 5, 2014 statement, a customer indicated that the postmaster told her that a package did not get to her house because appellant placed an incomplete address on it. The record contains EEO documents from February 2010 regarding the EEO mediation referenced by appellant with respect to his rest breaks. However, the documents reflect that the employing establishment did not admit to any wrongdoing in this mediation resolution.

Appellant submitted medical evidence in support of his claim, including reports of Dr. Fernando Cabrera, Jr., an attending Board-certified psychiatrist.

In a February 25, 2015 statement, the second postmaster denied the allegations made by appellant in his statement received by OWCP on November 28, 2014. She denied that appellant was subjected to harassment or discrimination or that there was any error or abuse with respect to administrative matters. The second postmaster indicated that, with respect to the October 30, 2013 incident, appellant was the physical aggressor in the conflict with a coworker.³

In a decision dated March 27, 2015, OWCP denied appellant’s emotional condition claim because he had failed to establish any compensable employment factors. It found that appellant had not established the factual basis for his claims of harassment and discrimination and had not established error or abuse with respect to administrative matters.

In a letter dated December 21, 2015, appellant, through counsel, requested reconsideration of OWCP’s March 27, 2015 decision. Counsel argued that OWCP had actually found several accepted work factors in its March 27, 2015 decision, including those related to harassment on September 19, 2009 and October 7, 2010 and the questioning of his work based on results of the use of the Delivery Operation Information System by his supervisor.

³ The second postmaster submitted a November 14, 2010 statement in which another coworker indicated that appellant aggressively insulted him at work on November 13, 2010.

Appellant submitted additional medical reports in support of his claim, including a May 17, 2015 report of an attending clinical psychologist and a May 20, 2015 report of an attending Board-certified psychiatrist.

By decision dated May 26, 2016, OWCP denied modification of its March 27, 2015 decision denying appellant's emotional condition. It continued to find that appellant had failed to establish any compensable employment factor, whether in the form of harassment, discrimination, or error or abuse in administrative matters.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁴ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁵

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.⁶ However, the Board has held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.⁷ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁸

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his or her regular duties, these could constitute employment factors.⁹ However, for harassment or discrimination to give rise to a compensable disability under FECA,

⁴ *Lillian Cutler*, 28 ECAB 125 (1976).

⁵ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁶ *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

⁷ *William H. Fortner*, 49 ECAB 324 (1998).

⁸ *Ruth S. Johnson*, 46 ECAB 237 (1994).

⁹ *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under FECA.¹⁰

Appellant has the burden of establishing by the weight of the reliable, probative, and substantial evidence that the condition for which he claims compensation was caused or adversely affected by employment factors.¹¹ This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.¹²

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.¹³ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter claimed is a compensable factor of employment and the evidence of record establishes the truth of the matter claimed, OWCP must base its decision on an analysis of the medical evidence.¹⁴

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete and accurate factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁵

ANALYSIS

Appellant alleged that he sustained an emotional condition as a result of a number of alleged employment incidents and conditions. OWCP denied appellant's emotional condition claim because he did not establish any compensable employment factors. The Board must initially review whether these alleged incidents and conditions of employment are covered

¹⁰ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹¹ *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹² *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹³ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁴ *Id.*

¹⁵ *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

employment factors under the terms of FECA. The Board notes that appellant's allegations do not pertain to his regular or specially assigned duties under *Cutler*.¹⁶ Rather, appellant has alleged error and abuse in administrative matters and harassment and discrimination on the part of his supervisors.

Appellant alleged that his employer committed wrongdoing by improperly issuing unwarranted disciplinary letters, mishandling a special inspection of his mail route, improperly assigning work tasks, mishandling matters relating to limitations caused by his health, improperly changing methods of mail delivery to customers, and incorrectly using a management tool called the Delivery Operation Information System. Such administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA. However, the Board has held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.

The Board finds that appellant had not submitted sufficient evidence to establish error or abuse with respect to these administrative matters. Appellant filed grievances and EEO complaints with respect to some of these matters, but the results of these actions do not show management wrongdoing. For example, the record contains mediation papers from the EEO complaint regarding rest breaks, but the documents indicate that any changes made to mail delivery practices were without prejudice to either party.¹⁷ Thus, appellant has not established a compensable employment factor under FECA with respect to his claims that management committed error or abuse with respect to administrative matters.

Appellant claimed that two of his supervisors subjected him to harassment and discrimination by yelling at him, embarrassing him in front of his coworkers, subjecting him to discriminatory discipline actions, isolating him from coworkers, and failing to discipline workers who were aggressive towards him. The employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that he was harassed or discriminated against by his supervisors.¹⁸ Appellant alleged that supervisors made statements and engaged in actions which he believed constituted harassment and discrimination, but he provided no corroborating evidence, such as witness statements, to establish that the statements actually were made or that the actions actually

¹⁶ See *supra* note 4.

¹⁷ Appellant asserted that management changed the delivery method to a certain address and that customers began to question why their mail was being delivered to private mailboxes instead of their own businesses. The record contains a statement of a customer who complained about this practice, but this evidence would not show that management's actions constituted error or abuse.

¹⁸ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence). The Board notes that one of appellant's supervisors indicated that appellant was the physical aggressor in a conflict with a coworker and therefore her discipline of him was not discriminatory.

occurred.¹⁹ While he submitted statements from postal customers, these fail to prove any error or abuse with respect to administrative matters. Thus, appellant has not established a compensable employment factor under FECA with respect to the claimed harassment and discrimination.

On appeal counsel argues that OWCP actually found several accepted work factors in its March 27, 2015 decision including those related to harassment on September 19, 2009 and October 7, 2010 and the questioning of his work based on results of the use of the Delivery Operation Information System by a supervisor. However, a review of OWCP's March 27, 2015 decision reveals that the incidents and condition referred to by counsel were actually deemed to relate to administrative matters which, in the absence of error or abuse, would not constitute employment factors.

For the foregoing reasons, appellant has not established any compensable employment factors under FECA and, therefore, has not met his burden of proof to establish that he sustained an emotional condition in the performance of duty.²⁰

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish an emotional condition in the performance of duty.

¹⁹ See *William P. George*, 43 ECAB 1159, 1167 (1992). In a November 5, 2014 statement, a customer indicated that the postmaster told her that a package did not get to her house because appellant placed an incomplete address on it. However, this statement does not show that the postmaster engaged in harassment, let alone harassment that directly affected appellant.

²⁰ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; see *Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).

ORDER

IT IS HEREBY ORDERED THAT the May 26, 2016 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 7, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board